U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

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[redacted]

MAR 26 2004

FILE: [redacted] Office: BALTIMORE, MD Date:

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Jamaica who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having been convicted of possession of marijuana in 1983. The record reflects that the applicant married a lawful permanent resident of the United States in 1997. The applicant's spouse became a naturalized citizen of the United States on February 19, 1999. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her husband and U.S. citizen children and grandchildren.

The district director found that based on the evidence in the record, the applicant had failed to establish that she was convicted of possessing 30 grams or less of marijuana and therefore, had failed to establish statutory eligibility for a waiver. The application was denied accordingly. *See* Decision of the District Director, dated January 6, 2003.

On appeal, counsel asserts that the Immigration and Naturalization Service [now Citizenship and Immigration Services] incorrectly interpreted and applied the standard outlined in *Matter of Grijalva*, 19 I&N 713, 718 (BIA 1988). Counsel contends that the evidence proffered by the applicant is clear and convincing as required by *Grijalva*, but that CIS is erroneously holding the applicant to a higher standard. In support of these assertions, counsel submits a copy of a letter written by the applicant to the Baltimore City Police Department, dated January 15, 2003; a copy of a letter from the Community Correspondence Unit of the Baltimore Police Department, dated February 3, 2003; a sworn affidavit of the arresting officer in the applicant's conviction, dated February 19, 2003 and a copy of the National Institute of Standards and Technology Metric Conversion Chart. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(2) of the Act states in pertinent part:

> (2) Criminal and related grounds. —
>
> (A) Conviction of certain crimes. –
>
> (i) In general. – Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of . . .
>
> (II) a violation of (or conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.

Section 212(h) of the Act provides, in pertinent part:

> The Attorney General [now Secretary of Homeland Security (Secretary)] may, in his discretion, waive the application of . . . subparagraph [2] (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if –
>
> (1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that –
>
> (i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
> (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
> (iii) the alien has been rehabilitated.

In this application, counsel has submitted a sworn affidavit of the officer present at the execution of the search warrant leading to the applicant's arrest on March 16, 1983. The retired officer testifies, under penalty of perjury, that he remembers the quantity of marijuana involved to be half an ounce or approximately 15 grams of marijuana. *See* Affidavit of Michael Morreale, dated February 19, 2003. Through this testimony, the applicant corroborates her own account of the arrest and proves credibly and convincingly that her arrest and conviction for possession of marijuana related to a single offense of simple possession of 30 grams or less of marijuana as required by section 212(h) of the Act, 8 U.S.C. § 1182(h).

Having proven the applicant eligible for consideration of a waiver pursuant to section 212(h)(1)(A), counsel asserts that the applicant's conviction occurred more than 15 years before the date of the applicant's proper filing of the Application to Register Permanent Residence or Adjust Status (Form I-485) on April 26, 2002, satisfying section 212(h)(1)(A)(i). Further, the AAO notes that the record does not indicate that the applicant's admission would be contrary to the national welfare, safety, or security of the United States. Therefore, the applicant satisfies section 212(h)(1)(A)(ii). Finally, the applicant has maintained a clean criminal history since her arrest in 1983 and has contributed to the community by finishing school and building a career as a Licensed Practical Nurse. Counsel points out that the applicant is a homeowner, a taxpayer and a "commendable person." *See* Supplementary Brief in Support of an Application for a Waiver of Inadmissibility under Immigration and Nationality Act § 212(h)(1)(A), dated December 30, 2002. A waiver of inadmissibility under section 212(a)(2)(A)(i)(II) of the Act requires compliance with sections (i), (ii) and (iii) of section 212(h)(1)(A) of the Act, 8 U.S.C. § 1182(h)(1)(A). The record demonstrates that the applicant meets the criteria for all three sections required to obtain a waiver of inadmissibility.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained. The decision of the district director is withdrawn, and the application is approved.